

2. This Notice of Removal is timely filed pursuant to 28 U.S.C. § 1446(b) in that it is filed within thirty (30) days from the date on which Defendant Smith was first served with the summons and complaint.

3. The complaint asserts various state-law causes of action and claims for relief against the defendant related to an incident that occurred in Oconee County, South Carolina on or about November 3, 2018.

4. Upon information and belief, the plaintiff is a citizen and resident of Connelly Springs, Burke County, North Carolina. *See Exhibit A, ¶1.*

5. Defendant Smith is a citizen and resident of the State of Iowa. *See Exhibit A, ¶2.*

6. Defendant Diamond S. Ventures, Inc. is a corporation organized and existing under the laws of the State of Missouri. *See Exhibit A, ¶3. and Exhibit B.*

7. Citizenship for diversity jurisdiction purposes is determined at the time the action is commenced. *See Athena Auto, Inc. v. DiGregorio*, 166 F.3d 288 (4th Cir. 1999).

8. Complete diversity of citizenship exists amongst the parties.

9. The amount-in-controversy requirement for diversity jurisdiction is satisfied in this case because it is clear from the face of the plaintiff's complaint that the "matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs." 28 U.S.C. § 1332(a).

10. In determining whether the claims in the complaint meet the jurisdictional amount, the district court may make reasonable deductions, inferences, or other extrapolations from the pleadings to determine whether it is apparent that a case is removable. *See Francis v. Allstate Ins. Co.*, 709 F.3d 362, 368 (4th Cir. 2013) (affirming district court's use of "experience and common sense" to conclude that the amount-in-controversy requirement was satisfied). Put simply, a

district court determining the amount in controversy “is not required to leave its common sense behind.” Hamilton v. Ocwen Loan Servicing, LLC, No. 9:12-cv-03111-PMD, 2013 WL 499159, at *5 (D.S.C. Feb. 7, 2013) (*quoting* Crosby v. CVS Pharmacy, Inc., 409 F. Supp. 2d 665, 668 (D.S.C. 2005)).

11. The plaintiff’s complaint alleges causes of action for negligence against the defendants. *See* **Exhibit A**. The plaintiff is seeking recovery of damages related to “severe and painful injuries” in both the past and future as well as recovery of damages for “physical pain, suffering and mental anguish for a significant period of time,” “doctor bills, prescriptions and other medical care, attention and treatment, for himself.” *See* **Exhibit A**, ¶¶ 13, 14. While the defendant denies any and all liability or wrongdoing for the matters alleged in the complaint, the allegations of injuries and damages sought in the complaint are substantial and in other cases, such allegations have resulted in judgments and demands in excess of \$75,000. Based on these allegations, the jurisdictional amount is satisfied.

12. In addition to the claims for compensatory damages, the plaintiff seeks punitive damages against the defendant. *See* **Exhibit A**. It is well settled that potential punitive damages must also be considered in any calculation of the amount in controversy. *See, e.g., R.L. Jordan Oil Co. of North Carolina, Inc. v. Boardman Petroleum*, 23 Fed. Appx. 141, 145 n.3 (4th Cir. 2001) (“When calculating the amount in controversy, the district court should consider any special or punitive damages.”); Am. Health & Life Ins. Co. v. Heyward, 272 F. Supp. 2d 578, 581 (D.S.C. 2003) (holding that claims for punitive damages “must be included in the calculation of the amount in controversy”). While the defendant denies the plaintiff is entitled to an award of punitive or compensatory damages, the Court should infer from the plaintiff’s request for punitive damages

that the plaintiff is seeking to recover damages that exceed compensation solely for his alleged injuries. *See Woodward v. Newcourt Comm. Fin. Corp.*, 60 F. Supp. 2d 530, 532 (D.S.C. 1999) (holding that “[plaintiff’s] claim for punitive damages alone makes it virtually impossible to say that the claim is for less than the jurisdictional amount”). Therefore, the allegations of the complaint make clear that the plaintiff’s claim for punitive damages, together with the claims for compensatory damages, seek an amount in excess of \$75,000.

13. Because there is diversity of citizenship between the plaintiff and the defendant and the amount in controversy exceeds \$75,000 exclusive of interest and costs, this action is a civil action of which this Court has original jurisdiction pursuant to 28 U.S.C. §1332. Therefore, the action brought by the plaintiff against the defendant is a suit of a civil nature, the character of which the District Courts of the United States are given original diversity jurisdiction under 28 U.S.C. §1332, and is one that may be removed by this Court by the defendant pursuant to U.S.C. §1441.

14. The Anderson Division of the United States District Court for the District of South Carolina is the proper venue because it is the “district and division” embracing Oconee County. *See* 28 U.S.C. §§ 1441(a), 121(4).

15. The defendant submits this Notice of Removal without waiving any defenses to the claims asserted by the plaintiff or conceding that the plaintiff has pled claims upon which relief can be granted.

WHEREFORE, the defendant prays the above action now pending against him in the Court of Common Pleas for Oconee County, South Carolina, be removed therefrom to this Court,

that this Court exercise jurisdiction over this action, and that this Court grant such other further relief as this Court deems just and necessary.

Respectfully submitted,

s/T. David Rheney

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